

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4325 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
:

PARITOSH A PATEL

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

MR RS SANJANWALA for Petitioner

MR HS MUNSHAW for Respondent No. 1

MR PJ KANABAR for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/11/1999

ORAL JUDGEMENT

By this application under Art. 226 of the Constitution of India, the petitioner calls in question the legality and validity of the order dt. 1st May, 1996 passed by the respondent no.1 cancelling the allotment of the Industrial Unit at Rajkot called " Rajkot Carbonic Pvt.Ltd." situated at Shahpur, and prays for the possession of that Unit for which his bid was highest at the auction; or in the alternative, for refund of the sums, he paid, with interest, etc.

2. Necessary facts may, in brief, be stated. Rajkot Carbonic Pvt. Ltd. did not make the payment to the respondent no.1 as per its obligation, and therefore, the said Unit was required to be auctioned out. The auction was held on 12th January, 1996. Prior to it, tenders were invited on 8th January, 1996. The petitioner who wanted to purchase the Unit, paid Rs.25,000/- as earnest money deposit before the tender on 17-1-96. Prior to it, he submitted the tender form on 11th January, 1996. He received the receipt of Rs.25,000/- the earnest money that he had paid. The tenders received were opened. The petitioner's tender being of a highest amount viz. Rs. 5,11,111/- was accepted on 20th January, 1996. As per the terms of the auction and acceptance of the tender, the petitioner was required to make the payment of Rs.1,79,111/- being 30% amount of the auction value within a period of 30 days i.e. on or before 20th February, 1996 and balance of Rs. 3,32,000/- was to be paid within a period of one and half year by six equal installments commencing from 1st May, 1996. The petitioner made the payment of Rs. 1,00,000/- on 5th February, 1996, but the said amount was wrongly credited under another Head. Realizing the mistake, it was correctly credited on 20th April, 1996, but before that, on 2nd April 1996, the petitioner paid Rs.54,101/-. As the payment was not made before the dead line fixed i.e. 20th February, 1996, the respondent no.1 demanded interest at the rate of 20% which on calculation came to Rs. 1,335/-. The petitioner made the payment of the amount of interest on 16th April, 1996. He thus made the payment of 30% of the amount with interest. On 15th April, 1996, the petitioner had written a letter to the respondent no.1 with a request to put him into the possession of the Unit. Thereafter as per the formalities to be undergone, on 21st April, 1996 a Deed of Guarantee duly signed was sent by the petitioner to the respondent no.1. Thereafter the respondent no.1, instead of handing over the possession of the Unit auctioned out the Unit to respondent no.3. cancelling the order of allotment, on the ground that the petitioner made the payment late and thereby committed breach of one of the conditions of the auction. Being aggrieved by such order, this petition is filed.

3. At the time of hearing, when it was found that the Unit is already sold to the respondent no.3, and setting the clock back would cause several hardships to many, a query was made by the court to the learned advocate representing the petitioner, whether the petitioner would like to accept the amount with interest back rather than being keen for possession of the Unit.

The learned advocate for the petitioner with his usual candour conceded to the proposal. The parties are, therefore, heard only on that point.

4. Of course, it was the contention advanced on behalf of the respondent no.1 that when the petitioner had committed breach of one of the conditions of the auction, refund of the sum cannot be made to the petitioner. The contention on no ground can find favour. When the respondent no.1 has already received the full amount of Rs. 5,11,111/-, and petitioner's bid found highest is being not accepted, the respondent has to refund the sum because the sums received by respondent no.1 must be termed as deposit till auction is finalised. Hence though not necessarily so, situation alike the relations like debtor & creditor develops and obligation to pay the sums back arises unless the provision of law in force or any term or condition of auction permits forfeiture. No law or term of auction permits forfeiture by respondent no.1. True, partly the sums are paid late but the respondent no.1 accepted late payment charging interest. The late payment is thus condoned. It is hence not open to respondents to forfeit the amounts received from the petitioner. The petitioner is, therefore, entitled to have the refund of the sums he has paid.

5. Whether on the amounts to be refunded, whether the petitioner is entitled to interest, is also the point raised before me. The learned advocate for the petitioner submits that when the respondent no.1 charged interest at the rate of 20% per annum from petitioner as payment was made late, equally the respondent is also liable to pay the interest; and also because the respondents renege on the acceptance at the end of auction and sold the Unit to respondent no.3 realising the amount from him and thereby gaining from both ways which cannot be terms just. It is also urged that the rate of interest may be fixed keeping in mind Sec. 34 of C.P.Code. In reply, it is the contention of the learned advocate representing the respondent no.1 that when the petitioner failed to withdraw the amount though requested as per letter dt. 1st May, 1996, the petitioner is entitled to no interest. The contention cannot be accepted. Interest is the premium paid for the use of money. The respondent no.1 received the money with interest and has utilised the same, may be for a short period. Even on the ground of mercantile usage, interest can be allowed. On equitable ground also, interest has to be allowed. Further in such cases, fair play & equity dictates that interest has to be awarded.

6. At what rate, the interest should be awarded is next point that arises for consideration. As stated above, Rs.1,79,111/- were paid latest by 16th April, 1996, and thereafter the petitioner paid rest of the amount in piecemeal between 30th April, 1996 to 11th January, 1999. Thus full amounts of Rs. 5,11,111/- have been paid. When thus the amounts in piecemeal are paid and that too once committing breach of one of the conditions of the auction, the interest should be paid from 1st January, 1999 as the last payment was made on 11th January, 1999 satisfying the full claims to be satisfied as per bid in auction. Hence the interest at the rate of 10% p.a. would meet the ends of justice.

7. For the aforesaid reason, the petition is partly allowed. The respondent no.1 is hereby ordered to pay Rs.5,11,111/- (Rs. Five lacs eleven thousand one hundred and eleven only) to the petitioner together with interest thereon at the rate of 10% per annum from 1st January, 1999 till the payment is made. The respondent no.1 shall make the payment latest by 30th November, 1999. The order granting status quo shall be deemed to have been lifted from 30th November, 1999. Rule to the aforesaid extent made absolute.

Date:19/11/1999. -----
(ccshah)